

CALIFORNIA FAMILY RIGHTS ACT

If the words "California Family Rights Act" put a big question mark in your head, then you need to keep reading. This law provides employees with up to 12 weeks of unpaid family care and medical leave in a one-year period. Since its inception in 1993, the law applied when the employer had 50 or more employees within a 75-mile radius of the employee's work location (similar to the federal Family and Medical Leave Act). But no longer: As of January 1, 2021, the law applies to employers of **five** or more employees. It's true: 5 is the new 50. If you have not already done so, learning about the CFRA and preparing to administer it should be a very high priority for you. This alert gives you an overview of the fundamentals and a list of action items.

To be eligible for CFRA leave, an employee must have (1) more than 12 months of service with the employer and (2) at least 1,250 hours of service with the employer during the previous 12-month period. Leave is available for the following purposes:

- The employee wants time off for "baby bonding" -- the birth of a child of the employee or the placement of a child with an employee in connection with the employee's adoption or foster care of the child.
- The employee has a serious health condition that makes the employee unable to perform the functions of the employee's position of that employee (this does not include leave taken for disability on account of pregnancy, childbirth, or related medical conditions).
- The employee must care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner who has a serious health condition.
- The employee needs time off because of a "qualifying exigency" related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States. (Examples include certain short-notice deployments, military events and related activities, taking care of childcare and school needs, making financial and legal arrangements, attending family counseling, and post-deployment activities.)

The statute and the regulations relating to it set forth specific information about topics such as the definition of a "serious health condition"; getting medical certification of an employee's condition; notice that must be given to employees; and use of leave on an intermittent basis.

During the leave time, the employer must maintain group health insurance on the same terms as if the employee was working. The leave is unpaid, but an employee may elect to use, or an employer may require an employee to use, any accrued vacation time or PTO available to the employee. If the leave is for the employee's own serious health condition (or if mutually agreed upon when leave is for any

other reason), an employee may use, or an employer may require an employee to use, any accrued sick leave.

With narrow exceptions, the employee is entitled to be reinstated to their job or a comparable position. It is this area most CFRA claims are born! It's critical that employers consult with their attorney before deciding not to allow an employee to return to work after CFRA leave.

When an employer "interferes" with the employee's ability to receive the law's benefits or "retaliates" against an employee for requesting or taking CFRA leave, the employee may sue and recover a broad range of remedies, including attorney's fees. To minimize the chance of such claims, you should do the following:

1. Add a written CFRA policy to your employee handbook. At the very least, distribute a standalone policy until you update your handbook.
2. Display in your workplace the Department of Fair Employment and Housing poster found here: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/12/CFRA-and-Pregnancy-Leave_ENG.pdf
3. Designate two or more employees as your CFRA administrators. Ensure that they receive sufficient education and training.
4. Prepare template forms – for employee to request CFRA leave; for doctor to certify serious health condition
5. Prepare template letters/emails – to acknowledge employee's request and, if applicable ask for additional information; to designate the leave as CFRA leave, or not; to guarantee reinstatement in writing, if the employee so requests

Investing time now will lead to smoother handling of employees' leave requests going forward.

David B. Monks
Fuller Law Group P.C.
dmonks@fullerlawgroup.co (no "m")
www.fullerlawgroup.co